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IN THE

Supreme Court of the United States

October Term, 1978

No. 78-1772

UNITED ARTISTS CORPORATION,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

REPLY BRIEF FOR PETITIONER

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Three points must be made in reply to the Government's brief in opposition to this Petition.

1. This case is certainly not moot. Petitioner turned over its documents to the Antitrust Division under its express reservation of the right to file the instant Petition for Certiorari and seek review of the lower courts' orders before the Government turns the documents over to the grand jury.

Moreover, *nowhere* in the Government's brief does it say that the documents in fact have been turned over to the

grand jury. If the Government takes such action before this Court passes on Petitioner's application for certiorari, it of course proceeds at its own peril. Thus, even under the cases cited by the Government, the matter is not moot.

2. The Government admits that, even if moot, a question of "substantial importance" should be reviewed by this Court on a writ of certiorari (Government's brief in opposition p. 6). Furthermore, the Government does not challenge Petitioner's statement of the very real importance of the question presented here: in a proceeding initiated under a civil consent decree, can the Government foreclose appellate review merely by inserting a grand jury into the proceeding?

The Government's brief does not even try to rebut the widespread criticism of such an interpretation of the law. The Government's brief does not even mention the Harvard Law Review article relied on by Petitioner. Indeed, the Government's only answer to the question is that Petitioner can obtain appellate review by placing itself in contempt. This is the very type of Hobson's Choice which scholars have criticized.

3. The Government's attempt to distinguish *Perlman* v. *United States*, 247 U.S. 7 (1918) (at footnote 8, pp. 7-8 of its brief in opposition), simply ignores the fact that, long prior to the grand jury subpoena to Petitioner, the Government had obtained over 570 documents from Petitioner by use of the "visitation" provision of the *Paramount* decree.* The Government obtained these documents without even mentioning the possibility that they would be

* This is admitted at p. 3 of the Government's brief in opposition.

given to a grand jury. As in *Perlman*, Petitioner is powerless to prevent the misuse of these documents by the Government unless there is appellate review of the Government's actions now.

The Government's offer of a "consolation prize," appellate review at the conclusion of any action flowing from the grand jury, is unsatisfactory. Such review cannot undo the damage caused Petitioner by the Government's misuse of the grand jury, nor can it retrieve the 570 documents or the wasted time and expense suffered by the litigants and the courts.

Conclusion

The Petition for a Writ of Certiorari should be granted.

Dated: New York, New York
June 13, 1979

Respectfully submitted,

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